

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA**

QUIBIDS, LLC, an Oklahoma limited
liability company,

Plaintiff and Counter-Defendant,

vs.

1524948 ALBERTA LTD., an Alberta,
Canada corporation d/b/a Terra Marketing
Group,

Defendant and Counter-Plaintiff.

CASE NO. 5:10-CV-00639-R

**COUNTERCLAIM OF 1524948 ALBERTA LTD., d/b/a TERRA MARKETING
GROUP, AGAINST QUIBIDS, LLC FOR FALSE ADVERTISING,
DEFAMATION, COPYRIGHT INFRINGEMENT, AND INJUNCTIVE
AND DECLARATORY RELIEF**

Defendant and Counter-Plaintiff 1524948 ALBERTA LTD. d/b/a Terra Marketing Group (“Terra Marketing”), through its attorneys, alleges this Counterclaim against Plaintiff and Counter-Defendant QUIBIDS, LLC (“Quibids”), as follows:

Introduction

1. In its Complaint against Terra Marketing, QuiBids has made allegations of trademark infringement, false advertising, unfair and deceptive trade practices, and other claims. As set forth in Terra Marketing’s Answer, Terra Marketing denies each and

every one of those allegations, stated or implied. This Counterclaim is filed to allege the true facts from which this dispute arises, and to assert Terra Marketing's claims against QuiBids for what was actually a sustained effort by QuiBids to inflict the very same wrongs against Terra Marketing that QuiBids accuses Terra Marketing of doing.

2. This Counterclaim arises out of the theft and subsequent wrongful and illegal use of Terra Marketing's trademarks, copyrighted creative materials, and website elements owned by Terra Marketing, by Counter-Defendant QuiBids, LLC and its president Matt Beckham, and QuiBids' national campaign of false advertising involving completely fabricated news stories, fake customer testimonials and the wrongful misappropriation of the image of a French television news anchor.

Jurisdiction

3. This Court has subject matter jurisdiction over the federal claims (Claims II and III) under 28 U.S.C. §1331 and 28 U.S.C. §1338(a). This Court has supplemental jurisdiction over the Oklahoma common law claim (Claim I) and the declaratory relief claim (Claim IV) under 28 U.S.C. §1367.

4. This Court has personal jurisdiction over Counter-Defendant QUIBIDS LLC because, pursuant to Oklahoma's Long Arm Statute, 12 Okla. Stat. §2004(F), all claims for relief in this action arise from the following acts of QuiBids, which occurred in Oklahoma:

- a. QuiBids's principal place of business is located in Oklahoma; it maintains substantial property, assets, accounts, employees, and other capital in

Oklahoma; and it conducts all or a substantial portion of its business in Oklahoma;

- b. QuiBids owns, operates, and controls certain interactive websites and online fora that directly solicit content and commerce from Oklahoma residents about Oklahoma businesses and vendors in online auctions. The websites and fora enable users to participate in, and post content about, online auctions and other commercial activities from locations in Oklahoma and about businesses and vendors located in Oklahoma; and
- c. QuiBids has transacted business within the state of Oklahoma to supply online auction services within the state of Oklahoma and to residents of Oklahoma, and has derived substantial revenue from services rendered in Oklahoma.

Venue

5. Venue is proper in this District because QuiBids's principal place of business is in this District, and accordingly, under 28 U.S.C. §1400(a), venue is proper in this District because the claims asserted against QuiBids herein are based at least in part on violations of the copyright laws of the United States.

1524948 Alberta Ltd. d/b/a Terra Marketing Group

6. Defendant and Counter-Plaintiff 1524948 ALBERTA LTD., an Alberta, Canada corporation d/b/a Terra Marketing Group is a corporation organized and existing under the laws of the Province of Alberta, Canada, and maintains an office in Calgary, Alberta, Canada. Terra Marketing is the creator and owner of the website located at the domain name SwipeBids.com, an online auction website.

QuiBids, LLC

7. On information and belief, Counter-Defendant QUIBIDS, LLC is a limited liability corporation organized and existing under the laws of the State of Oklahoma, and maintains its principal place of business in Oklahoma City, Oklahoma. QuiBids is the registrant and owner of the domain names QuiBids.com and, on information and belief, ConsumerTipsDigest.org. Upon information and belief, QuiBids is also the creator, owner, administrator, and/or other party responsible for the creation and/or maintenance of a Facebook group entitled “Swipebids.com-is-a-Bloody-SCAM,” in which group defamatory statements, discussions, and other postings regarding SwipeBids.com have been posted.

DOE Counter-Defendants

8. This Complaint shall be amended to substitute names of individual or business entities for “Doe” counter-defendants in due course, upon the identification of additional defendants through discovery.

Terra Marketing’s Business and Marks

9. Terra Marketing is the owner and operator of a website located at the domain name SwipeBids.com (“SwipeBids”) which is an online auction facility that allows users to register and participate in auctions for consumer goods at typically substantial discounts from ordinary retail prices. Terra Marketing has operated SwipeBids continuously since December 2009. To market the SwipeBids.com online auction site, Terra Marketing has invested heavily in its service mark SwipeBids (the “Mark”). Terra Marketing has continuously used and conducted business under the Mark

in interstate and international commerce since December 2009, and has advertised in connection with the Mark throughout the country and the world, principally through advertising on the Internet.

10. Through Terra Marketing's continuous and exclusive use of the Mark, the Mark has acquired secondary meaning and goodwill as consumers have come to associate the Mark with Terra Marketing and its services.

11. Since Terra Marketing began using the Mark, Terra Marketing's services sold in connection with the Mark have generated millions of dollars in revenue. Terra Marketing has devoted and continues to devote considerable time, effort, and money in promoting and marketing its services offered in connection with the Mark.

12. Terra Marketing has filed an application with the United States Patent and Trademark Office for the registration of the Mark. As of the filing of this Complaint, that application was still pending.

QuiBids' and Beckham's Wrongful Acts and Conduct

13. QuiBids and its president Beckham have engaged in a variety of wrongful misconduct. First, Beckham, acting on behalf of QuiBids and in an effort to advance QuiBids's interests, signed up as an "affiliate publisher" with COPEAC, which is an advertising vendor of Terra Marketing. QuiBids and/or Beckham then used this special access through COPEAC in order to steal copyrighted material from Terra Marketing. Thereafter, QuiBids and/or Beckham created virtually identical copies of Terra Marketing's copyrighted materials and used them as the primary marketing materials for QuiBids, generating hundreds of thousands if not millions of dollars from such stolen

copyrighted materials. QuiBids and Beckham committed these acts over and over again for a number of months without Terra Marketing becoming aware of them until late July 2010. Copies of Terra Marketing's copyrighted materials in side-by-side comparison with those copies created therefrom by QuiBids and Beckham are attached hereto for the sake of illustration as Exhibit 1.

14. Second, QuiBids has engaged in a sophisticated campaign of false advertising using a variety of methods. QuiBids has and currently is marketing its product through the use of a fake blog that purports to be a consumer protection/awareness blog created by an investigative reporter; however, the blog is, on information and belief, entirely fake and a mere shell site for QuiBids. The creation, maintenance, and operation of such fake blogs are hallmarks of fraudulent marketing. QuiBids has routinely engaged in those activities; conversely, Terra Marketing has never owned, operated, or created any fake blogs. As with QuiBids's misappropriation of Terra Marketing's intellectual property, QuiBids's false advertising continued for months before Terra Marketing became aware of it.

15. QuiBids has also engaged in a massive national advertising campaign using advertisements containing Mélissa Theuriau, a news anchor from a prominent French television station, who is portrayed by QuiBids in the advertisements as having "investigated" and approved or sponsored QuiBids's products. On information and belief, these statements are false, and QuiBids does not have permission to use Ms. Theuriau's image.

A. Theft of Copyrighted Materials and Infringement

16. Terra Marketing has invested heavily into the development of its sales materials for its product, and the graphics, wording and other elements of its sales pages have been thoroughly tested, at great expense, to determine the optimal version to maximize the conversion of users to paying customers. Terra Marketing uses multiple affiliate marketing advertising networks to sell its product. When an advertiser, such as Terra Marketing, engages an advertising network, it places links with the advertising network to sales materials and landing pages that are not publically available other than to customers who are targets of the marketing. The advertising networks have hundreds and often thousands of independent “affiliate publishers” who will use the advertiser’s marketing materials to promote the advertiser, and the advertiser pays the affiliate network for all sales resulting from such marketing. The advertising network takes a commission on the sale, and passes the balance on to the affiliate publisher. The identities of affiliate publishers are strictly confidential; otherwise, advertisers could circumvent the advertising networks and contract directly with affiliate publishers.

17. In this matter, QuiBids and/or Beckham entered a contract with advertising network COPEAC for the general purpose of being an “affiliate publisher” for COPEAC and for the specific purpose of identifying and stealing Terra Marketing’s valuable copyrighted marketing materials. Upon contracting with COPEAC, QuiBids and/or Beckham were given COPEAC Affiliate ID 20578. Thereafter, QuiBids and/or Beckham, due to their access as an affiliate publisher of COPEAC, identified and stole

graphics belonging to SwipeBids by making copies of Terra Marketing's key sales pages, which are protected by a registered copyright.

18. On information and belief, QuiBids and/or Beckham, despite that fact that QuiBids is a direct competitor with Terra Marketing, proceeded to promote Terra Marketing's product, SwipeBids.com, with a fake blog created by QuiBids, which included fake customer testimonials, fake user comments and the unauthorized use of photographs of people whom QuiBids purports to be news reporters. As a result of QuiBids's promotion of Terra Marketing's products, at least 1469 clicks and 54 sales were generated. This misconduct not only was in violation of QuiBids's and/or Beckham's contract with COPEAC, which prohibits the use of their system for unlawful reasons, but the misconduct was, at its core, highly deceptive and fraudulent marketing that violated a variety of state and federal laws, subjecting Terra Marketing to potential liability to third parties.

19. As shown in Exhibit 1 and in other instances, QuiBids also used the copyrighted materials stolen from Terra Marketing to create substantially similar or virtually identical marketing materials for QuiBids's own product at QuiBids.com. Importantly, Terra Marketing's testing of its marketing materials has demonstrated to Terra Marketing that certain wording and certain placement of offer points and graphics lead to significantly greater sales than alternative wording and placement. As sophisticated affiliate marketers and competitors in the same industry as Terra Marketing, QuiBids is well aware of how specific wording and placement of media within advertising can make the difference between profitable and unprofitable advertising

campaigns. With this knowledge, QuiBids proceeded to copy all of the key sales materials and use such materials in its marketing for its products. This use was unauthorized, without privilege and unlawful.

B. False Advertising by QuiBids

20. QuiBids engaged, and continue to engage, in a significant amount of marketing that is not just false but virtually completely fabricated. As background, Beckham has a long history before his work with QuiBids in promoting products with fabricated, or “fake,” blogs, in the realm of açai berry products and other weight loss products. For example, Beckham, on information and belief, created the fake blogs that were formerly located at <shirleysdietjournal.com> and <abbysdietjournal.com> to promote weight loss products, and these, and his other blogs, were complete fabrications, containing fake names, fake testimonials, fake user comments and using photographs of people without authorization (or using stock photography and passing it off as the fake person created in the blog). Beckham used these same unlawful techniques to create the marketing materials for QuiBids.

21. Specifically, QuiBids, in its marketing materials, has used two photographs of women claiming that they are news reporters reporting, or who have reported, about the QuiBids product and its supposed success. The use of both pictures is highly deceptive. First, QuiBids uses a picture of a woman appearing to be a reporter on a newsroom set, with the word, “Featured,” above her head, and the words, “Investigating QuiBids.com – A new auction site on the web,” next to the photograph. The photograph

and the words clearly convey the idea that she a real news reporter, working for an actual news outlet, who has investigated and/or reported about the QuiBids product.



22. However, this is false. In fact, the photograph is of a French journalist and anchor for the French channel M6, Méliissa Theuriau, who, on information and belief, has never reported on QuiBids, nor has she ever mentioned QuiBids in any sort of media, video, print, web or otherwise. On information and belief, QuiBids stole this photograph from this web page, containing many photographs of Ms. Theuriau, including the one stolen by QuiBids: <http://www.yousaytoo.com/Anwar/the-worst-most-beautiful-news-reporter/8845>. The actual photograph that was stolen and manipulated appears as follows:

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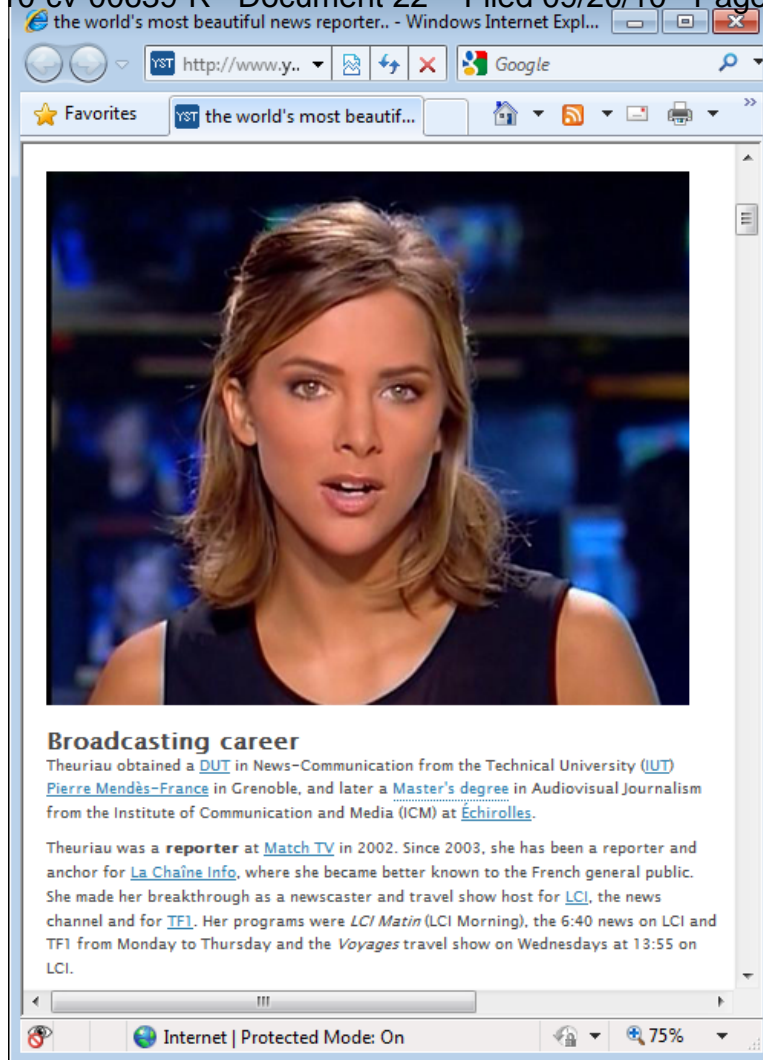
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23. The second deceptive use of a photograph of a purported female reporter involves a picture of a woman holding a microphone with the caption, “Julie’s our Consumer Tips Investigator Reporting on New Shopping Trends.” The photograph and caption clearly convey the message that there is a reporter who works for the website “Consumer Tips Digest” named Julie, and that she, an investigative reporter, is involved in the publication of a purported consumer protection/consumer awareness website. This is all false. The photograph is a stock photograph licensed from the website, www.istockphoto.com, and, on information and belief, her name is not Julie, and she


does not work for the “Consumer Tips Digest” website. Below are the photo from QuiBids’s website and a photo from the stock photography website.

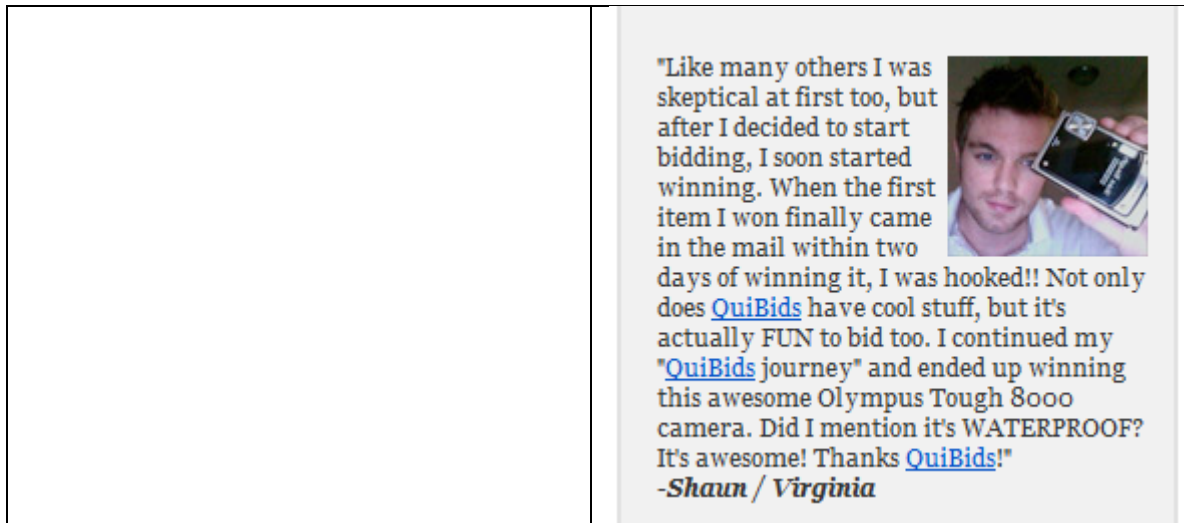


24. In addition to making false statements about real news reporters “investigating” or “reporting” on QuiBids, QuiBids filled its fake blogs with fake testimonials and fake user comments. Comparing QuiBids’s two fake blog websites at http://www.consumertipsdigest.org/penny_auctions/vt/index.php and at http://www.consumertipsdigest.org/penny_auctions/as/index2.php, it is clear that QuiBids fabricated customer testimonials and user comments, based on how QuiBids changed the customer names and photographs, as well as changed the user names in the user comments sections, for each of their two fake blogs.¹ Thus, it is clear that certain customer testimonials and user comments are fabricated; further, on information and belief, other testimonials and user comments --perhaps all of them—are fake.

¹ Beckham personally controls the website located at <consumertipsdigest.org>, as reflected in his control of such domain name’s domain name server (beckham-enterprises2.com), from March 16, 2010 to August 2, 2010.

<p>http://www.consumertipsdigest.org/penn_y_auctions/vt/index.php</p> <p>(Note the time elapsed since posting does not change, despite the implication that the posts are fresh and posted the same day as viewing)</p>	<p>http://www.consumertipsdigest.org/penn_y_auctions/as/index2.php</p>
<p>By Kellie Hawkins <i>posted 8 hr(s) 53 minutes ago</i></p> <p>What determines when an auction ends? It seems like the timer is reset back to 10 seconds as people continue to bid, then suddenly the auction is over and the item is SOLD even though people are still bidding, right!? So, at some point, does the auction just end regardless of whether bids are still be entered? Thanks.</p> <p>By Jill@QuiBids <i>posted 8 hr(s) 22 minutes ago</i></p> <p>The timer is reset each time a person bids, therefore, an auction ends when no one else bids. It never ends when people are still bidding. We want everyone to have a fair chance.</p>	<p>Sissydad says: Thu Jul 08, 2010 9:50 AM</p> <p>What determines when an auction ends? It seems like the timer is reset back to 10 seconds as people continue to bid, then suddenly the auction is over and the item is SOLD even though people are still bidding, right!? So, at some point, does the auction just end regardless of whether bids are still be entered? Thanks.</p> <p>Jill@QuiBids says: Thu Jul 08, 2010 6:33 PM</p> <p>The timer is reset each time a person bids, therefore, an auction ends when no one else bids. It never ends when people are still bidding. We want everyone to have a fair chance.</p>
<p>By Alexandra Thurber <i>posted 7 hr(s) 1 minute ago</i></p> <p>Thanks for the info. I just got registered and I already won my first auction!</p> <p>By Jill@QuiBids <i>posted 6 hr(s) 24 minutes ago</i></p> <p>Congratulations! Isn't winning fun?!</p>	<p>Mikey says: Thu Jul 08, 2010 8:54 PM</p> <p>Thanks for the info. I just got registered and I already won my first auction!</p> <p>Jill@QuiBids says: Sat Jul 10, 2010 2:24 PM</p> <p>Congratulations! Isn't winning fun?!</p>
<p>By Abigail Wright <i>posted 6 hr(s) 11 minutes ago</i></p>	<p>Cathy says: Sat Jul 10, 2010 3:16 PM</p>

<p>are the items we purchase brand new? open box items? refurbished items? If defective, can they be returned to the manufacturer under warranty?</p> <p>By Jill@QuiBids <i>posted 5 hr(s) 1 minute ago</i></p> <p>All products we purchase should be new and factory sealed. If you ever get a defective item, let us know immediately and we'll work out the issue - new product or a refund.</p>	<p>are the items we purchase brand new? open box items? refurbished items? If defective, can they be returned to the manufacturer under warranty?</p> <p>Jill@QuiBids says: Sat Jul 10, 2010 6:05 PM</p> <p>All products we purchase should be new and factory sealed. If you ever get a defective item, let us know immediately and we'll work out the issue - new product or a refund.</p>
<p>By James <i>posted 1 hr(s) 17 minutes ago</i></p> <p>So, if I bid when the timer says 08 seconds left, and no one else bids before the timer reaches 00, then I win the bid? I mean there is no minimum number of seconds for your bid to be listed before the bidding ends?</p> <p>By Jill@QuiBids <i>posted 1 hr(s) 17 minutes ago</i></p> <p>If you bid and no one else does, then yes, you've won the auction. Everyone has the same/fair chance to bid. So if they all just choose to not bid, then that works in your favor.</p>	<p>A.C. says: Fri Jul 16, 2010 12:08 PM</p> <p>So, if I bid when the timer says 08 seconds left, and no one else bids before the timer reaches 00, then I win the bid? I mean there is no minimum number of seconds for your bid to be listed before the bidding ends?</p> <p>Jill@QuiBids says: Sat Jul 17, 2010 12:13 PM</p> <p>If you bid and no one else does, then yes, you've won the auction. Everyone has the same/fair chance to bid. So if they all just choose to not bid, then that works in your favor.</p>
 <p>Blake talks about all the deals he's found on QuiBids.com</p>	



25. Interestingly, QuiBids has stated to the public that, "All our testimonials are real people who use and received their products from us [QuiBids]." (Posted on complaintsboard.com by admitted employee of QuiBids). This is itself another instance of false advertising because, as stated and illustrated above, it is clear that QuiBids has fabricated customer testimonials and user comments in its marketing.

26. QuiBids did not limit their false advertising to fake blogs. In fact, QuiBids has flooded the Internet with numerous versions of advertisements that fraudulently feature Méliissa Theuriau. As with the use of Ms. Theuriau's image on QuiBids's fake blog websites, it is highly doubtful that Ms. Theuriau has any idea that her image has been hijacked by QuiBids and used to hawk laptops, iPads, cameras and many other products on advertisements being run on hundreds if not thousands of websites all over the Internet. Some of examples of just two of the many versions of QuiBids's fraudulent advertising are below:



27. In addition to QuiBids's fake blogs and fraudulent use of Ms. Theuriau's image in a nationwide advertising campaign, QuiBids has also made many false statements about Terra Marketing. QuiBids, on information and belief, has created, itself and in conjunction with its agents, a page on the social networking website Facebook.com entitled, "Swipebidscom-is-a-Bloody-SCAM." This page asserts that

Terra Marketing is a “fraudulent company” that takes money from customers’ bank accounts without proper authorization. QuiBids has also, on information and belief, stated to the public, “[S]wipebids actually steals content off Quibids all the time” (posted on complaintsboard.com by agent of Quibids), and “[t]hey [Swipebids] have blatantly stolen our promoters, our own testimonials, TV news piece, etc. to benefit themselves,” (posted on associatedcontent.com by admitted employee of QuiBids). These statements are false, defamatory and have inflicted damage on Terra Marketing.

28. Quibids’ actual website is also filled with false statements. Such false statements include:

- a. Quibids has only auctioned off one automobile (a Honda Civic), but its website states that there were two different winners (usernames omega28 and merkmerk), and three different final prices (\$2,368.00, \$2,958.78, and \$1,740.78); accordingly, these statements are false.
- b. Quibids states throughout its website that its service is “FREE.” However, it is impossible to register and participate in any auctions on the Quibids.com website without paying a fee. Thus, Quibids’ assertions that its services are “FREE” are false, in addition to being in violation of FTC guidelines regarding use of the word “FREE.”
- c. Quibids claims to be the “#1 penny auction.” This statement, however, is false, because using any rational criteria such as Internet traffic volume, Alexa ranking, number of auctions ending daily, or BBB rating, Quibids is not the “#1 penny auction.” Thus, this statement is false.

- d. Quibids states that there “over 1,000 winners every day” on its website; however, such statement is false, as Quibids does not even have that many active bidders on any calendar day.

General Allegations as to Copyright Claims

29. “SwipeBids.com” and the creative elements thereof fall within the category of “pictorial, graphic and sculptural works” as defined in 17 U.S.C. §101 and are an original work of authorship subject to copyright protection pursuant to 17 U.S.C. §102(a)(5).

30. Terra Marketing is the author of the website located at “SwipeBids.com” and the elements thereof and is the owner of the copyright therein pursuant to 17 U.S.C. §201.

31. On the date of first publication of the “SwipeBids.com” website and the elements thereof, Terra Marketing was a national and domiciliary of a treaty party (to wit: Canada) and thus the website located at “SwipeBids.com” is subject to copyright protection pursuant to 17 U.S.C. §104(b).

32. As the owner of the copyright in the website located at “SwipeBids.com,” Terra Marketing has the exclusive rights provided in 17 U.S.C. §106, which include but are not limited to the right to reproduce the copyrighted work, the right to distribute copies of the copyrighted work to the public, the right to prepare derivative works based upon the copyrighted work, and the right to display the copyrighted work publicly.

33. In addition and pursuant to 17 U.S.C. §113, Terra Marketing has the exclusive right to reproduce the website located at “SwipeBids.com” in or on any kind of article, whether useful or otherwise.

34. On July 6, 2010, Terra Marketing submitted to the Copyright Office the required application and fee for the registration of its copyright in the website located at “SwipeBids.com.” Accordingly, under 17 U.S.C. §410(d), the effective date of the copyright registration is July 6, 2010.

Count I
Copyright Infringement

35. Terra Marketing restates and incorporates the allegations set forth in paragraphs 1 through 34 as though fully rewritten herein.

36. The actions of QuiBids as alleged herein have violated and continue to violate Terra Marketing's exclusive rights, including the rights to copy, reproduce, distribute and display publicly its original work of the website located at SwipeBids website and the creative elements and design thereof.

37. The actions of QuiBids as alleged herein constitute infringement of Terra Marketing's exclusive rights protected under the Copyright Act, 17 U.S.C. §101 et seq.

38. The infringing acts of QuiBids as alleged herein have been willful, intentional and in disregard of and with indifference to the rights of Terra Marketing.

39. The infringing acts of QuiBids are ongoing and will continue unless QuiBids is enjoined and restrained from continuing such conduct. Terra Marketing has no adequate remedy at law to prevent the ongoing and continuous infringement of its

exclusive rights by QuiBids, and is otherwise statutorily entitled to injunctive relief to prevent such infringement.

40. Pursuant to 17 U.S.C. §§502 and 503, Terra Marketing is entitled to injunctive relief to prohibit, enjoin and restrain QuiBids from further infringing its copyright and to an order against QuiBids, and as to all persons acting on its behalf and/or under its direction requiring the impoundment, destruction, erasure, and takedown of any and all copies of the elements of the website located at SwipeBids.com and/or any website or other online material derived therefrom and/or containing or using infringing materials in violation of Terra Marketing's exclusive rights, and requiring the cessation and prevention of all means by which such infringement may be conducted (including but not limited to QuiBids' affiliate account with COPEAC).

41. Pursuant to 17 U.S.C. §§504 and 505, Terra Marketing is entitled to an award against QuiBids of Terra Marketing's actual damages and the profits of QuiBids, as well as its court costs.

Count II
Trade Libel under Section 43(a) of the Lanham Act

42. Terra Marketing restates and incorporates the allegations set forth in paragraphs 1 through 41 above as though fully rewritten herein.

43. The statements and representations made by QuiBids of and concerning Terra Marketing included, but were not limited to, advertising, publishing, disseminating and communicating false and misleading statements and unfounded misrepresentations about the business, goodwill, and reputation of Terra Marketing.

44. The aforementioned false statements and representations of and concerning Terra Marketing were published, disseminated, or otherwise communicated by QuiBids.

45. The aforementioned false statements and representations made by QuiBids of and concerning Terra Marketing were published, disseminated, or otherwise communicated by QuiBids across state and national borders and in interstate and international commerce.

46. The aforementioned false statements and representations made by QuiBids of and concerning Terra Marketing were statements and representations of a commercial nature and constituted commercial speech since they were published, disseminated, or otherwise communicated with the intent of increasing QuiBids' sales and/or decreasing Terra Marketing's sales.

47. As a direct and proximate result of QuiBids' conduct as alleged herein, Terra Marketing is entitled to recover damages from QuiBids in an amount to be determined at trial.

Count III
False Advertising under Section 43(a) of the Lanham Act

48. Terra Marketing restates and incorporates the allegations set forth in paragraphs 1 through 47 above as though fully rewritten herein.

49. The aforementioned false statements and representations of and concerning Terra Marketing and QuiBids were published, disseminated, or otherwise communicated by QuiBids about QuiBids' and Terra Marketing's goods, services, and/or commercial activity.

50. The aforementioned false statements and representations deceive, or have the potential to deceive, a substantial portion of their targeted audience.

51. The deception caused by the aforementioned false statements and representations is likely to affect the purchasing decisions of the audience to which those false statements and representations were directed.

52. The aforementioned false statements and representations, and the advertising materials in which they were used, involve goods or services in interstate and international commerce.

53. The deception caused by the aforementioned false statements and representations resulted in, or is likely to result in, injury to Terra Marketing.

54. As a direct and proximate result of QuiBids' conduct as alleged herein, Terra Marketing is entitled to recover damages from QuiBids in an amount to be determined at trial.

Count IV
Common Law Defamation

55. Terra Marketing restates and incorporates the allegations set forth in paragraphs 1 through 54 above as though fully rewritten herein.

56. QuiBids has made false statements regarding Terra Marketing as identified hereinabove.

57. All of these statements are false, and QuiBids Beckham knew or should have known they were false when it published them as alleged herein.

58. QuiBids's statements constitute defamation per se, in that they defame Terra Marketing in its trade.

59. QuiBids published these statements without any privilege to do so.

60. As a proximate result of the foregoing acts, QuiBids has caused actual harm to Terra Marketing, and Terra Marketing has been damaged and will continue to be damaged.

PRAYER FOR RELIEF

WHEREFORE, Defendant and Counter-Plaintiff 1524948 Alberta Ltd., d/b/a Terra Marketing Group, respectfully requests judgment as follows:

1. That the Court enter judgment against QuiBids that it has made false and misleading representations of fact in commercial advertising, in violation of 15 U.S.C. §1125(a).

2. That the Court enter a judgment against QuiBids that it has defamed Terra Marketing in violation of Oklahoma common law.

3. That the Court order a public retraction by QuiBids of the published statements that defame Terra Marketing, and corrective advertising as to QuiBids's false statements and misrepresentations of and concerning QuiBids and Terra Marketing, all as identified herein and to be supplemented as discovered.

4. That the Court issue injunctive relief against QuiBids and its officers, agents, representatives, servants, employees, attorneys, successors and assigns, and all others in active concert or participation with QuiBids (including but not limited to

Beckham), enjoining and restraining them from using in any manner the SwipeBids service mark, or other service marks of Terra Marketing, alone or in combination with any other words or symbols, or any foreign derivatives or equivalents that are likely to cause confusion, deception or mistake, on or in connection with the advertising, offering for sale, or sale of any product or service that is not Terra Marketing's or not authorized by Terra Marketing to be sold in connection with that service mark; further enjoining and restraining them from using false advertising of the varieties alleged herein, including but not limited to the use of fake news blogs, the use of fake testimonials, and the false and unauthorized use of photos and videos of persons such as Mélissa Theuriau in such advertisements and testimonials, as alleged herein; and further enjoining and compelling QuiBids and Beckham, to deactivate and delete all affiliate accounts that QuiBids and/or Beckham hold with COPEAC.

5. That the Court enter a judgment against QuiBids declaring that QuiBids has infringed upon Terra Marketing's copyright and/or other rights in creative materials and/or other works relating to the website located at SwipeBids.com; that the interests alleged by Terra Marketing to have been infringed upon by QuiBids were protected by copyright or other rights and/or were infringed upon by QuiBids, including in part through the use of the facilities of COPEAC; and that Terra Marketing did not infringe upon any copyright or other legally protected interest of QuiBids and is not liable to QuiBids in any respect.

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6. That the Court order QuiBids to pay Terra Marketing's general, special, and actual and statutory damages as follows:

- a) Terra Marketing's compensatory damages in an amount according to proof;
- b) Punitive damages in an amount to be determined, but in no case less than treble Terra Marketing's damages;
- c) Terra Marketing's damages and QuiBids's profits pursuant to 15 U.S.C. §1117(a);
- d) Such other damages as the Court shall deem to be within the provisions of the Lanham Act; and
- e) Interest, including prejudgment interest, on the foregoing sums.

7. That the Court order QuiBids to pay to Terra Marketing both the costs of this action and the reasonable attorneys' fees incurred by Terra Marketing in prosecuting this action.

8. That the Court order such other relief to which Terra Marketing may be entitled as a matter of law or equity, or which the Court determines to be just and proper.

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REQUEST FOR JURY TRIAL

Terra Marketing hereby demands a trial of this action by jury, on all issues so triable.

Dated the 20th of September, 2010.

Respectfully submitted,

By: s/Karl S. Kronenberger

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Certificate of Service

☒ I hereby certify that on (date) September 20, 2010, I electronically transmitted the

attached document to the Clerk of Court using the ECF System for filing. Based on the records currently on

file, the Clerk of Court will transmit a Notice of Electronic Filing to the following ECF registrants: (insert names)

ATTORNEYS FOR QUIBIDS, LLC

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Anthony L. Rahhal
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211 North Robinson Avenue
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☐ I hereby certify that on (date) _____, I served the attached document by

(service method) _____ on the

following, who are not registered participants of the ECF System: (insert names and addresses)

s/ Karl S. Kronenberger

s/ Attorney Name